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Supreme Court, U.S.
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Case No. 851506

In the Supreme Court of the United States

October 1986 Term

KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CTS PRINTEX CORPORATION,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT CTS PRINTEX, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. QUESTIONS PRESENTED	1
III. STATEMENT OF THE CASE	2
IV. SUMMARY OF ARGUMENT	3
V. ARGUMENT	3
A. Petitioner Failed To Raise "Special and Important Reasons Therefor"; Accordingly, Review Should Not Be Granted.	3
B. Petitioner Failed To File The Petition On A Timely Basis; Accordingly, Review Should Not Be Granted.	5
VI. CONCLUSION	6

TABLE OF AUTHORITIES

	Page
Cases	
British Airways Bd. v. Boeing Co., 585 F.2d 946 (9th Cir.), *cert. denied,* 440 U.S. 981, 99 S.Ct. 1790, 60 L.Ed.2d 241 (1978)	4
Compton v. Ide, 732 F.2d 1429 (9th Cir. 1984)	4
First Nat. Bank of Ariz. v. Cities Service Co., 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)	4
Garcia v. American Marine Corp., 432 F.2d 6 (5th Cir. 1970)	5
Munoz v. International Alliance of Theatrical Stage Employees, etc., **563 F.2d 205 (5th Cir. 1977)**	5
Thomsen v. Western Elec. Co., Inc., 680 F.2d 1263 (9th Cir.), *cert. denied,* 459 U.S. 991, 103 S.Ct. 348, 74 L.Ed.2d 387 (1982)	4
Statutes	
42 U.S.C. § 1981	1,2
42 U.S.C. § 1983	1,2
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*	1,2,4

TABLE OF AUTHORITIES

	Page
Rules	
Federal Rules of Civil Procedure, Rule 56	4
Supreme Court Rules, Rule 17	3
17.1	3,4
20.1	5
20.3	5
20.4	5
29	5
29.3	5
Treatises	
Federal Rules of Civil Procedure, Rule 56, Advisory Committee Note	5

I

INTRODUCTION

The present Petition for Writ of Certiorari by Kenneth B. Quansah, Jr. (hereinafter "Quansah" or "petitioner") seeks to overturn a grant of a summary judgment motion, in opposition to which Quansah had refused to present any evidence. Quansah had sued his employer CTS Printex, Inc. (hereinafter "CTS" or "respondent") in the United States District Court for the Northern District of California. He conclusorily charged it, *inter alia*, with discrimination, specifically violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, 42 U.S.C. § 1981, and 42 U.S.C. § 1983. The crux of Quansah's allegations appear to be that he believed that he was not interviewed when he applied for work, and that he was denied the opportunity to "negotiate" an "initial contract wage."

CTS moved for summary judgment, presenting evidence that directly refuted Quansah's contentions. Affiant Katrina McCuiston averred that she in fact interviewed Quansah, and identified notations on his employment application as having been made by her at the time of the interview. Affiant Denise Dragony, CTS's Human Resources Manager, declared that Quansah has received four salary increases during his employment based on periodic performance reviews, that he is paid weekly by respondent and has accepted each and every paycheck offered to him, and that his employment is at will, and he is free to terminate at any time. In response to the motion, Quansah offered *no evidence whatsoever* in support of his claim, choosing instead to rely on the allegations of the Complaint.

The District Court granted CTS's motion, after giving Quansah a full and fair opportunity to establish the existence of a genuine issue of material fact. The granting of summary judgment by the District Court was subsequently affirmed by the United States Court of Appeals for the Ninth Circuit. The Court of Appeals held that because of Quansah's failure to present "significant probative evidence tending to support" the allegations contained in the Complaint, no material fact was at issue, and thus the summary judgment was proper as a matter of law.

II

QUESTIONS PRESENTED

The Petition for Writ of Certiorari raises two questions:

1. Did the United States Court of Appeals for the Ninth Circuit prop-

erly affirm summary judgment in favor of respondent where the petitioner failed to raise a material issue of fact in support of his claims?

2. Should the United States Supreme Court deny the Petition for Writ of Certiorari on the grounds of untimeliness?

III

STATEMENT OF THE CASE

On July 16, 1984, petitioner filed this lawsuit in *pro per* in the United States District Court for the Northern District of California. The Complaint alleged (1) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*, (2) violation of 42 U.S.C. § 1981, (3) violation of 42 U.S.C. § 1983, (4) "failure to contract," (5) "negligence," (6) "constitutional slavery/involuntary servitude," and (7) "fraud."[1]

On September 6, 1984, respondent answered the Complaint, denying all of Quansah's allegations. On October 10, 1984, respondent filed a Motion for Summary Judgment, or in the Alternative, Judgment on the Pleadings. Respondent argued that the Complaint did not state facts sufficient to present a claim for which relief could be granted. In addition, respondent provided evidence by way of affidavit that directly refuted the petitioner's allegations. Quansah submitted no evidence at all in opposition to this motion, simply reiterating the belief expressed in his Complaint that he was treated unfairly.

The hearing on the motion was duly scheduled for December 7, 1984; however, the petitioner failed to appear at the hearing. On order of Hon. William W. Schwarzer, United States District Judge, the hearing was continued to December 14, 1984 to give the petitioner a further opportunity to present evidence. Quansah failed to appear at the second hearing. On December 14, 1984, the court granted respondent's Motion for Summary Judgment, and judgment in favor of CTS was entered on December 26, 1984.

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[1] Also named as a defendent in the case was the Equal Employment Opportunity Commission (hereinafter "EEOC"). Prior to filing this suit, Quansah had filed a charge with the EEOC, alleging that CTS had discriminated against him on the basis of race and national origin. The EEOC determined against Quansah, stating that there was no reasonable cause to believe that Quansah's allegations are true. The Complaint charged that "EEOC demonstrated to be lazy to check records and acquiesced in to deprive [Quansah]". The EEOC's Motion to Dismiss was granted on December 14, 1984 and judgment entered on December 26, 1984. No appeal was taken from the judgment.

On or about January 11, 1985, Quansah filed a Notice of Appeal in the United States District Court for the Northern District of California. The parties filed and exchanged briefs, and on November 12, 1985, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court. On December 17, 1985, the court denied Quansah's Petition for Rehearing.

On or about January 10, 1986, Quansah filed a purported "Notice of Appeal" with the United States Court of Appeals for the Ninth Circuit. The Petition for Writ of Certiorari was filed with the United States Supreme Court on March 12, 1986, *85 days after the Petition for Rehearing was denied.* The instant Petition, in addition to being untimely filed, raises "facts" and conclusory allegations that were not presented to the District Court, which petitioner advances as justifying review of the decision of the Court of Appeal.

IV

SUMMARY OF ARGUMENT

A review on writ of certiorari is a matter of judicial discretion, and will be granted *only* where there are "special and important reasons." This case presents no such circumstances. Petitioner simply seeks review of the decision of a federal Court of Appeals which affirmed the granting of summary judgment on the basis that no material fact was at issue. In the proceedings below, the petitioner failed to present any evidence in support of the allegations of the Complaint; his present attempt to set forth evidence that shows that his case has merit is simply too late. Thus, petitioner has failed to demonstrate any reasons supporting the granting of his petition. Moreover, review should be denied for the further reason that the Petition herein was filed over 60 days after the Petition for Rehearing was denied, and is thus untimely under Supreme Court rules.

V

ARGUMENT

A. *Petitioner Failed to Raise "Special and Important Reasons Therefor"; Accordingly, Review Should Not Be Granted.*

Rule 17 of the Rules of the Supreme Court provides that a writ of certiorari is a matter of *judicial discretion*, not a matter of right. It will be granted "only when there are special and important reasons therefor." Sup. Ct. R. 17.1. This rule, which gives guidance as to the character of reasons that the

Court will consider, cites such circumstances as whether the decision of a federal Court of Appeals conflicts with the decision of another Court of Appeals on the same matter, or whether a federal Court of Appeals had decided a federal question in conflict with a state court of last resort. Sup. Ct. R. 17.1(a). While the examples of the Rule do not "fully measur[e] the Court's discretion," this Petition does not show any considerations similar to those described therein.

The petitioner is attempting to appeal a summary judgment that was granted after he failed to present *any* evidence whatsoever in support of the allegations contained in the Complaint. Rule 56 of the Federal Rules of Civil Procedure specifically provides:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but *his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.*

Fed. R. Civ. P. 56(e) (emphasis added). *See also British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951-52 (9th Cir.), *cert. denied*, 440 U.S. 981, 99 S.Ct. 1790, 60 L.Ed.2d 241 (1978).

In *First Nat. Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569, the Court affirmed a summary judgment in favor of the defendant, holding that the plaintiff was *not* entitled to rely on the allegations contained in its complaint in the "absence of any significant probative evidence tending to support the complaint." 391 U.S. at 290. The Court of Appeals herein held that while Quansah "may have set forth a colorable claim of wage rate discrimination under Title VII," he failed to provide the District Court with any affidavit or other evidentiary response in support of the allegations contained in his original Complaint. Where a party offers no "significant probative evidence," and rests exclusively on the allegations of his pleading, no material fact is at issue and the moving party is entitled to judgment as a matter of law. *See, e.g., Compton v. Ide*, 732 F.2d 1429, 1434 (9th Cir. 1984); *Thomsen v. Western Elec. Co., Inc.*, 680 F.2d 1263, 1265 (9th Cir.), *cert. denied*, 459 U.S. 991, 103 S.Ct. 348, 74 L.Ed.2d 387 (1982). Thus, the Court of Appeals herein properly affirmed the judgment of the District Court.

The 1963 amendment to Rule 56(e), which had added the above-quoted portion of the rule, was specifically aimed at a situation like the present one. This

amendment was intended to overturn a line of cases in the Third Circuit which had allowed a party to defeat summary judgment by relying on the allegations contained in the pleadings.

> The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of [Rule 56].

Fed. R. Civ. P. 56 advisory committee note.

The Petition for Writ of Certiorari purports to raise new matters that petitioner apparently contends justify review by this Court. However, these "facts," which are no more than conclusory allegations, were not presented to the District Court below. It is well-settled that a reviewing court may *not* consider factual matters that were not presented to the trial court in opposition to a motion for summary judgment. *See, e.g., Garcia v. American Marine Corp.*, 432 F.2d 6, 8 (5th Cir. 1970); *Munoz v. International Alliance of Theatrical Stage Employees, etc.* 563 F.2d 205, 209 (5th Cir. 1977). Since the supplemental allegations contained in the Petition for Writ of Certiorari were not set forth in evidentiary form before the District Court, they should not be considered by this Court in determining whether to grant the Petition herein.

B. *Petitioner Failed to File The Petition On A Timely Basis; Accordingly, Review Should Not Be Granted.*

In addition to failing to present special or important reasons justifying review, the Petition is untimely. A Petition for Writ of Certiorari to review the judgment of a federal Court of Appeals *must* be filed within 60 days after the entry of judgment. Sup. Ct. R. 20.1. This 60-day period will not run, if a timely Petition for Rehearing is filed, until the Petition for Rehearing is denied. Sup. Ct. R. 20.4. A Petition for Rehearing in this matter was denied by the Court of Appeals on December 17, 1985. Eighty-five days later, on March 12, 1986, Quansah filed the Petition for Writ of Certiorari.[2] Clearly, this petition is "jurisdictionally out of time," and should be denied. *See* Sup. Ct. R. 20.3.

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[2] An application to extend the time in which to file a Petition for Writ of Certiorari pursuant to Rule 29 of the Rules of the Supreme Court was never made in this matter, as the Petition itself clearly discloses. In any event, no such application was served on respondent. Sup. Ct. R. 29.3.

VI

CONCLUSION

This Petition for Writ of Certiorari presents this Court with no special or important considerations warranting review. The petitioner is appealing a summary judgment granted after he failed to present any evidence in support of the allegations contained in the Complaint, and after he twice failed to appear and argue his case before the District Court. The purported "facts" advanced by his Petition have been "raised" too late and should not be now considered. Respondent submits that the Court of Appeals correctly applied Federal Rule of Civil Procedure 56(e) to require entry of judgment as a matter of law against petitioner.

In addition, the Court lacks jurisdiction to grant the Petition for Writ of Certiorari because it was filed over 60 days following denial of Quansah's Petition for Rehearing by the Court of Appeals.

For these reasons, the respondent respectfully requests that the Petition for Writ of Certiorari be denied.

DATED: April 14, 1986

Respectfully submitted,
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